ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act	)	CC Docket No. 96-98
of 1996	)	

PETITION FOR LIMITED RECONSIDERATION AND CLARIFICATION

Mark C. Rosenblum
Roy E. Hoffinger
Clifford K. Williams
James H. Bolin, Jr.

Its Attorneys

Harry K. Sugar

295 North Maple Avenue
Room 3245I1
Basking Ridge, New Jersey 07920
(908) 221-2631

October 7, 1996

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SUMMARY

AT&T Corp. hereby petitions the Commission to reconsider and clarify in certain respects its Second Report and Order in CC Docket No. 96-98.

The Commission should reconsider its decision permitting LECs that are not affiliated with BOCs to defer implementation of toll dialing parity until February 8, 1999, or until such time as those carriers provide in-region interLATA or in-region interstate toll calling. Section 251(b)(3) of the Telecommunications Act of 1996 makes clear that, with certain limited exceptions enumerated in § 271(e)(2)(B) which pertain only to BOCs, all local exchange carriers are required to implement dialing parity without delay. Even if the Commission had the authority to postpone implementation, nothing in the record suggests that immediate implementation of dialing parity is technically infeasible, or that it should be delayed for any other reason. The Commission instead should require that, except as provided in § 271(e)(2)(B), all Tier I LECs must implement dialing parity using the full 2-PIC method by January 1, 1997.

The Second Report and Order's requirement that CLECs receive only one central office, or "NXX," code from an existing Numbering Plan Area ("NPA") as part of an overlay NPA relief plan unreasonably discriminates against new entrants into local exchange markets. This holding also appears to rest on a misunderstanding of industry practices for assigning NXX codes. Allocating a single NXX to a new entrant will permit that carrier to serve only a single rate center, while the incumbent LEC will continue to possess significant NXX resources for all rate centers in that NPA. The Commission should reconsider its one-NXX-per-NPA standard, and instead require that when an NPA overlay is implemented, all remaining NXXs must be equitably distributed among CLECs, according to their requirements.

The Second Report and Order refused to make permanent local number portability a precondition to an overlay NPA relief plan, ruling that interim number portability would adequately reduce the anticompetitive effects of overlays. However, the Commission failed even to consider its previous findings that interim portability measures could impair the quality and reliability of services offered by CLECs. The Commission should reconsider this conclusion in light of its prior rulings, and should require that permanent number portability measures be in place prior to implementation of any NPA overlay relief plan.

The Commission should clarify its policy permitting central office code administrators to charge for opening new NXX codes. As the Second Report and Order recognized, ILECs acting as NXX code administrators have both the incentive and the opportunity to discriminate against competitors. Accordingly, the Commission should make clear that charges to open a new NXX must be limited to the forward-looking, economically efficient costs of numbering administration that an ILEC incurs, if any, to set up a new central office code.

Finally, the Commission should clarify its statements in the Second Report and Order concerning "takebacks" of wireless customers telephone numbers when a geographic NPA split is implemented. Such takebacks impose disproportionate burdens on both wireless customers and wireless carriers. Accordingly, the Commission should make clear that state utilities commissions should not require wireless customers to return their telephone numbers as part of an NPA split.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

PETITION FOR LIMITED RECONSIDERATION AND CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby requests the Commission to reconsider and clarify in certain respects its Second Report and Order in the above-captioned proceeding.[1] AT&T petitions the Commission: (i) to reconsider its decision permitting LECs that are not affiliated with a Bell Operating Company ("non-BOC LECs") to defer implementation of intraLATA toll dialing parity until February 8, 1999, or until such time as those carriers provide in-region interLATA or in-region interstate toll calling; (ii) to reconsider its decision requiring that CLECs receive only one central office, or "NXX," code from an existing Numbering Plan Area ("NPA") as part of an overlay NPA relief plan; (iii) to reconsider its decision declining to make permanent local number portability a

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, released August 8, 1996 ("Second Report and Order").

precondition to an overlay NPA relief plan; and (iv) to clarify its policy permitting central office code administrators to charge for opening new NXX codes.

I. THE COMMISSION'S DECISION PERMITTING NON-BOC LECs TO DEFER IMPLEMENTATION OF DIALING PARITY IS CONTRARY TO THE 1996 ACT AND FINDS NO SUPPORT IN THE RECORD

Section 251(b)(3) of the Telecommunications Act of 1996 ("1996 Act") provides that all local exchange carriers have "[t]he duty to provide dialing parity to competing providers of telephone exchange service ...." The only condition on this dialing parity mandate is found in § 271(e)(2)(B), which permits BOCs to defer implementation of intraLATA dialing parity in some states for up to three years from the date of enactment of the 1996 Act.

The Second Report and Order requires non-BOC LECs to provide toll dialing parity by the earlier of February 8, 1999, or the date they begin providing in-region interLATA or in-region interstate toll service ("in-region interLATA services").[2] Non-BOC LECs that begin to provide in-region interLATA services before August 8, 1997 (including those that already provide such services), are not required to implement toll dialing parity until that date.[3] The Commission's decision to grant non-BOC LECs an extended period in which to implement dialing parity finds no support in the record of this proceeding, and is contrary to both the language and intent of the 1996 Act.

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2 Id., ¶¶ 59-60.

3 Id., ¶ 61.

The plain language of § 251(b)(3) imposes an clear and unqualified mandate for dialing parity. The sole exception to this statutory requirement is expressly limited to BOCs, and apparently was intended to compensate for the fact that BOC LECs cannot offer in-region interLATA services originating in a state until they satisfy the "checklist" provisions of § 271 and the other terms of the 1996 Act for that state. However, non-BOC LECs are permitted to offer in-region interLATA services immediately. Accordingly, the 1996 Act does not grant them any sort of "window" in which they are not required to provide toll dialing parity to their competitors. The dialing parity timetable established in the Second Report and Order's will permit non-BOC LECs to shelter themselves from fair competition for up to three years. A non-BOC LEC that opts not to compete in the market for in-region interLATA services can ensure that until late 1999 its customers will be unable to make intraLATA toll calls using any other carrier unless they first dial an access code.[4]

The Commission also should reconsider its decision to permit non-BOC LECs to delay implementation of dialing parity for up to one year after they begin to offer in-region interLATA services. The 1996 Act expressly provides that even BOCs, which § 271(e)(2)(B) grants up to three years to implement dialing parity, must provide dialing parity as soon as they

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[4] As AT&T has shown, two state utilities commissions have already recognized that competitors receive substantially inferior, and less valuable, access to a LEC's network in the absence of full 2-PIC dialing parity. See AT&T Comments, filed May 20, 1996, pp. 5-6, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, released April 19, 1996.

are authorized to provide in-region interLATA services. However, the Second Report and Order grants non-BOC LECs as much as a year in which to offer bundled, direct-dial local, intraLATA toll, and long distance service; while requiring their local exchange customers to dial access codes to make intraLATA calls via their competitors' networks.

The sole basis the Second Report and Order offers for granting these artificial and unwarranted competitive advantages to non-BOC LECs is a desire not to "impose an unreasonably short timetable" on them.[5] However, there is nothing in the record before the Commission that even suggests that there are technological or other barriers that prevent the immediate implementation of dialing parity. Indeed, the order notes that "the technology for the full 2-PIC method [of presubscription] is widely available and well defined."[6]

The unlawfulness of the Commission's deferral of dialing parity implementation is underscored by comparing § 251(b)(3) with the number portability requirements of § 251(b)(2), in the immediately preceding subsection of the 1996 Act. LECs are required to implement number portability only "to the extent technically feasible."[7] In contrast, § 251(b)(3)'s dialing parity mandate contains no such limitation. Congress expressed its views plainly when it sought to condition § 251's requirements on the availability of a particular technology; and it obviously placed no such limit on its dialing parity mandate.

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5 Second Report and Order., ¶ 61.

6 Id., ¶ 50.

7 47 U.S.C. § 251(b)(2).

The plain language of the 1996 Act requires non-BOC LECs to implement dialing parity without delay, and nothing in the record suggests any reasoned basis to defer implementation. The Commission should reconsider the Second Report and Order's dialing parity timetable; and instead should require that, except as provided in § 271(e)(2)(B), all Tier I LECs must implement dialing parity using the full 2-PIC method by January 1, 1997.

II. THE COMMISSION'S DECISION TO ALLOCATE A SINGLE NXX CODE TO NEW ENTRANTS UNREASONABLY DISCRIMINATES AGAINST CLECs, AND APPEARS TO BE BASED ON A MISCONCEPTION OF INDUSTRY STANDARDS

As the Second Report and Order explains, Congress "recognized that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States."[8] As part of the Commission's effort to comply with this mandate, the Second Report and Order requires state commissions seeking to implement an NPA overlay relief plan to ensure that every carrier authorized to provide service in an area subject to overlay obtain at least one NXX in the existing NPA.[9] Access to NXXs in the existing NPA is crucial to fair competition because, as the Second Report and Order found, the old area code will be more "desirable" to customers than the overlay NPA.[10] The NXX-per-NPA requirement thus seeks to prevent the serious competitive imbalance that would result if CLECs, but not ILECs, were limited to offering telephone numbers only in the new, less

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8 Second Report and Order, ¶ 261.

9 Id., ¶ 286.

10 Id., ¶ 288.

desirable area code. However, the Commission's decision appears to rest on a misconception of industry practice regarding assignment of NXX codes. Assigning only one NXX in an NPA will permit CLECs to serve only a single rate center in the more attractive, existing area code. In contrast, and much to their advantage, incumbent LECs will be able to assign numbers from the old NPA across the entire area.

The Second Report and Order recognizes that even in an overlay environment, ILECs will be able to continue to assign their customers a significant volume of telephone numbers in the old NPA:

> Incumbent LECs have an advantage over new entrants when a new code is about to be introduced, because they can warehouse NXXs in the old NPA. Incumbents also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers.[11]

The Commission's decision to allot one NXX in the old NPA to new entrants was expressly intended to "advance competition" by permitting competing exchange providers to have access to these numbering resources, which are inherently more desirable to telephone customers than numbers in the overlay NPA.[12]

It is clear, however, that the one NXX-per-NPA requirement will not have the effect the Commission intended. Access to a single NXX does not provide a new entrant with a

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11 Id., ¶ 289 (footnote omitted).

12 Id., see also id., ¶ 286 (overlay requirements "ensure that competitors ... do not suffer competitive disadvantages"), 288 (allotting one NXX per NPA will "reduce the potential anticompetitive effect" of overlays).

meaningful opportunity to offer service in the existing area code. Under prevailing industry practices, one NXX is required for each rate center served by a local exchange carrier.[13] Providing a single NXX to a CLEC thus does almost nothing to counter the anticompetitive effects of an overlay. While an ILEC will be able to assign new numbers from a stable of NXXs extending across the entire NPA, new entrants will be limited to a single rate center. This imbalance inevitably will injure new entrants into local markets. For example, there are fifty-five rate centers in Bell Atlantic's territory in the 201 area code, in the state of New Jersey (as well as additional rate centers served by other carriers). Allotting a single NXX to a new entrant would permit that carrier to offer numbers in the desirable, existing NPA for only one of those rate centers. Meanwhile, Bell Atlantic -- and only Bell Atlantic -- would be granted a significant competitive advantage in the remaining fifty-four rate centers.

In sum, allocating only one NXX code to new entrants will permit CLECs to compete on even terms only at a single rate center in an area code in which an overlay is implemented. AT&T urges the Commission to reconsider its one NXX-per-NPA standard, and instead to require that when an NPA overlay is implemented, all remaining NXXs must be equitably distributed among CLECs, according to their requirements.

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[13] Various ILECs have recognized this fact in filings before the Commission concerning this issue. See, e.g., NYNEX Comments, filed Sept. 16, 1996, p. 6, in Teleport Communication Group Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering Plan Administration, NSD File No. 96-9, filed July 12, 1996.

III. THE COMMISSION'S REFUSAL TO REQUIRE PERMANENT NUMBER PORTABILITY AS A CONDITION FOR NPA OVERLAYS IS INCONSISTENT WITH ITS PRIOR RULINGS

The Second Report and Order found that interim number portability measures would be sufficient to reduce the anticompetitive effect of NPA overlay plans, and rejected arguments that implementation of permanent local number portability should be a requirement for any overlay.[14] This conclusion is inconsistent with the Commission's prior findings, and should be reconsidered.

In particular, the Commission's decision not to condition the use of an overlay NPA on the availability of permanent number portability conflicts with its finding that "[permanent] number portability is essential to ensure meaningful competition in the provision of local exchange services."[15] The Commission also recognized that currently feasible means of providing interim portability could impair "the quality, reliability, and convenience of telecommunications services" offered by new entrants into local markets.[16] Indeed, the Commission was so strongly convinced of the importance of permanent number portability to local competition that it mandated its implementation in the top 100 MSAs by the end of 1998,

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14 See, e.g., AT&T Reply Comments, filed June 30, 1996, pp. 7-8, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, released April 19, 1996; MCI Comments, pp. 9-12, in id.; MFS Comments, p. 4, in id.

15 Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, released July 2, 1996, ¶ 28.

16 Id., ¶ 110.

despite the fact that many ILECs proposed timetables that were considerably longer. The Second Report and Order's discussion of overlay plans did not dispute or distinguish these prior findings, or otherwise account for them in any fashion; instead, the Commission simply observed that to require permanent portability might foreclose overlays as a near-term option in some states.[17]

Even in the absence of an NPA overlay, new entrants will be disadvantaged by interim number portability measures because their customers will be forced either to give up their current telephone numbers, or to accept lower quality service. In an overlay situation, because new entrants will be forced to offer new telephone numbers almost exclusively in the undesirable new NPA, these customers will face the added difficulty of changing area codes as well. Thus, overlay plans place a significant incremental burden on CLECs seeking to enter local markets.

In light of its uncontroverted prior rulings regarding the shortcomings of interim portability measures, the Commission should reconsider its decision to allow NPA overlays in areas in which permanent portability is not yet in place. Alternatively, the Commission should require, at minimum, that overlays may not be implemented in the top 100 MSAs before permanent number portability is achieved in those areas. Interim portability simply will not be sufficient to eliminate the anticompetitive effects of overlays -- effects which the Commission clearly recognized in its Second Report and Order.

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[17] Second Report and Order, ¶ 290.

IV. THE COMMISSION SHOULD CLARIFY THAT ANY ILEC CHARGES FOR OPENING NEW NXX CODES MUST BE LIMITED TO COSTS THAT PROPERLY ARE ATTRIBUTABLE TO NUMBERING ADMINISTRATION FUNCTIONS

The Second Report and Order concludes that "any incumbent LEC charging competing carriers fees for assignment of [central office] codes may do so only if the incumbent LEC charges one uniform fee for all carriers, including itself or its affiliates."[18] Any fees charged for opening NXX codes also must not be "unjust, discriminatory, or unreasonable."[19] AT&T strongly supports these rulings. As the Second Report and Order recognized, ILECs acting as NXX code administrators have both the incentive and the opportunity to discriminate against competitors, and the Commission's new rules are intended to help check that power.[20] However, currently ILECs' charges for opening NXX codes vary wildly, as do the types of expenses they attribute to this task, permitting significant opportunities for incumbent LECs to use their control over numbering resources to their own advantage through the imposition of fees that are "unjust" and "unreasonable."[21] In order to expedite resolution of disputes that threaten to delay

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18 Id., ¶ 332.

19 Id., ¶ 333.

20 See id., ¶¶ 330, 334-35.

21 Some ILEC Numbering Administrators have imposed charges of more than $30,000 for each NXX code opened, while many do not charge any fee, and others fall at various points between these two figures. See Wireless/Wireline Interconnection Arrangements, ex parte document filed April 4, 1996 by USWest, pp. 132-137, in Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers CC Docket No. 95-185.

competition, AT&T requests that the Commission provide some additional guidance as to the "reasonableness" of NXX code assignment fees.

Specifically, the Commission should clarify that any fees charged by an ILEC for NXX code opening must be limited the forward-looking, economically efficient costs, if any, of numbering administration. NXX code opening charges should reflect only those costs that would also be borne by a neutral third party acting as Numbering Administrator, such as entering information into the Bellcore Integrated Rating and Routing Database ("BIRRDS"). Costs incurred by an ILEC in order to route traffic to or from a new NXX code in order to serve its own customers are not expenses incurred by virtue of its duties as Numbering Administrator;[22] rather, they are costs that must be borne by every carrier that interconnects with the LEC to whom the new NXX is assigned (and even by PBX operators that must reprogram their equipment to recognize the new central office code). The Commission should clarify the position it adopted in the Second Report and Order by providing a simple, "bright-line" rule: if a cost element attributed to NXX code opening would not be incurred by a neutral third party acting as Numbering Administrator, such as the North American Numbering Council, then an ILEC may not charge that expense to competitors as part of its NXX code opening fee.

In addition, the Commission should make clear that when an ILEC charges a fee to its competitors for opening central office codes, it is required to impute the same charges to itself

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22 Examples of costs that all LECs must incur to route traffic to or from a new NXX include activities such as switch translations necessary to effect call completion, or the opening of a new code in operations support systems.

not only for codes opened since the date of the Second Report and Order, but retrospectively for every NXX code that it has allocated to itself. As the Commission observed in its NANP Order, "the fundamental principles in establishing a cost recovery mechanism are that the mechanism should be fair, competitively neutral, and apply consistently to all users of number resources."[23] To "grandfather" ILECs' NXX resources makes no more sense than to allow them to assume that there was no cost for any other essential input for which their competitors must pay. It would be unreasonable to require CLECs to pay for numbering resources that ILECs are permitted simply to appropriate in vast quantities.

V. THE COMMISSION SHOULD CLARIFY THAT WIRELESS NUMBER TAKEBACKS WOULD DISPROPORTIONATELY BURDEN WIRELESS CUSTOMERS

A number of commenters in this proceeding requested that the Commission prohibit state commissions from ordering "wireless takebacks" when implementing geographic splits of NPAs. In support of this request, these commenters indicated that the Texas Public Utilities Commission might implement a mandatory pro-rata takeback of wireless numbers as part of a potential NPA split. In the Second Report and Order, the Commission stated that it would "not take action here to prevent the Texas Commission from taking back some wireless numbers in the course of introducing a geographic split plan."[24] AT&T urges the Commission to

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23 Administration of the North American Numbering Plan, Report and Order, CC Docket No. 92-237, FCC 95-283, released July 13, 1995, ¶ 95 (emphasis added).

24 Second Report and Order, ¶ 308.

reconsider this aspect of the Second Report and Order, and to offer a more definite statement of its position on wireless takebacks. Wireless number takebacks would impose significant burdens on wireless customers that wireline customers would not be forced to bear. Accordingly, the Commission should make clear that state commissions may rely on voluntary wireless number "givebacks" and similar programs, but may not require wireless customers to switch their telephone numbers to the new NPA in the event of a geographic split.

As it has stated in other proceedings, AT&T strongly supports the Commission's policy that administration of numbering resources should be "technology neutral."[25] However, there are critical differences between wireless and wireline telephone service that make takebacks disproportionately burdensome to wireless customers, as well as technologically unnecessary. While wireline telephones have a physical address and location, wireless phones merely have a billing address. It is therefore a misconception to regard wireless phones as being located on one side or the other of the line dividing an existing NPA in the event of a geographic split. Further, wireline customers literally need not take any action to change their telephone numbers to a new NPA -- indeed, their numbers will be changed on their behalf even if they do not want them to be. In contrast, wireless customers forced to change their NPA would face the significant burden and inconvenience of returning their phones for reprogramming. Wireless customers will not only be required to bring their phones to a designated site, their phones also will be unavailable to them while reprogramming takes place. The California Public Utilities Commission recently recognized

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[25] See, e.g., id., ¶ 305.

that, because of the distinctions between wireline and wireless telephone service, wireless takebacks would impose an unnecessary and inequitable hardship on wireless customers and carriers:

> Wireless carriers served at a tandem should be permitted to retain their existing code assignment after a geographic split. We agree this provision is appropriate to relieve the burden which would otherwise fall disproportionately on such carriers whose customers' equipment would have to be brought in for reprogramming or reprogrammed by the customer. Wireline customers, by contrast, do not have to bring in their handsets when they are subject to a new area code.[26]

The FCC should clarify its position on wireless number takebacks to make clear that when a geographic split is implemented in an NPA, wireless customers may not be required to change their telephone numbers to the new area code.[27] Alternatively, at a minimum the Commission should make clear that, because of the critical distinctions between wireless and wireline technology and the disproportionate burdens imposed on wireless customers by wireless takebacks, it would not be inequitable for a state commission to permit wireless customers to keep their telephone numbers in the event of an NPA split.

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[26] California Public Utilities Commission, Opinion in Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, R.95-04-043, released August 2, 1996, p.31.

[27] When an NPA overlay is implemented, technical requirements may dictate that a relatively small number of wireless customers change their numbers to the new area code. The Commission should, of course, permit wireless number takebacks that are necessary for technological reasons.

CONCLUSION

For the reasons stated above, the Commission should reconsider and clarify its Second Report and Order in CC Docket No. 96-98.

Respectfully submitted,

By: _____

Mark C. Rosenblum
Roy E. Hoffinger
Clifford K. Williams
James H. Bolin, Jr.

Its Attorneys

Harry K. Sugar

295 North Maple Avenue
Room 3245I1
Basking Ridge, New Jersey 07920
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